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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,313	07/11/2001	Shuji Kitamura	4703/OJ586	2308

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EXAMINER

MELLER, MICHAEL V

ART UNIT PAPER NUMBER

1654

DATE MAILED: 05/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/889,313

Applicant(s)

KITAMURA ET AL.

Examiner

Michael V. Meller

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2003 and 03 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9 and 18-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9 and 18-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claims 35 and 36 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

These claims do not find support from the instant specification. There is nothing in the instant specification to show that such claims have any support.

Claim Rejections - 35 USC § 102

Claims 9, 18-23, 25-29, 31-36 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 583074, Nakamura et al. or Yamamoto '940.

Applicant argues that the references do not explicitly state that the fermentation is done under stirring conditions.

While this is noted it is also noted that stirring and mixing are commonly used throughout the references and it is commonly known in the art when two ingredients are combined to stir them. Since we are dealing with the area of biotechnology, specifically fermentation, it is common practice to stir or mix the microorganism and the milk since it would increase the surface area of the milk and resulting curd pieces to the action of the microorganism. The references are very clear in that the milk and the microorganism are fermented as applicant has done and such fermentation is routinely done with mixing as is evidenced throughout the references. Simply because the references do not explicitly state that they stirred the fermentation mixture does not mean that they did not since it is inevitable that they did since how else could the microorganism and the milk properly react ?

Since the viscosity is a direct result of the claimed process, then if the process is conducted the same way as claimed, the viscosity is inherently going to be the same since the method of making the milk is the same.

It is also noted in Webster's that to stir involves at least a slight movement which mixing clearly would produce.

Claims 9, 18-23, 25-27, 29, 31-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto '796 or Yamamoto '111.

Applicant argues that the references do not explicitly state that the fermentation is done under stirring conditions.

While this is noted it is also noted that stirring and mixing are commonly used throughout the references and it is commonly known in the art when two ingredients are combined to stir them. Since we are dealing with the area of biotechnology, specifically fermentation, it is common practice to stir or mix the microorganism and the milk since it would increase the surface area of the milk and resulting curd pieces to the action of the microorganism. The references are very clear in that the milk and the microorganism are fermented as applicant has done and such fermentation is routinely done with mixing as is evidenced throughout the references. Simply because the references do not explicitly state that they stirred the fermentation mixture does not mean that they did not since it is inevitable that they did since how else could the microorganism and the milk properly react ?

Since the viscosity is a direct result of the claimed process, then if the process is conducted the same way as claimed, the viscosity is inherently going to be the same since the method of making the milk is the same.

It is also noted in Webster's that to stir involves at least a slight movement which mixing clearly would produce.

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Claims 9, 18-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 583074, Nakamura et al., or Yamamoto et al. '940.

Applicants' arguments are above. The same arguments are reiterated here. It would have been well within the purview of the skilled artisan to mix or stir the fermentation mixture since it is known in the art to do so as stated above and also since the references clearly teach to do so.

To stir the mixture at 1-50 rpm is also obvious since it is such a broad range and since such a speed is common in such mixing.

Claims 9, 18-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. '796 or Yamamoto et al. '111 in view of JP 2782153, EP 583074, Nakamura et al., or Yamamoto et al. '940.

Applicants' arguments are above. The same arguments are reiterated here. It would have been well within the purview of the skilled artisan to mix or stir the fermentation mixture since it is known in the art to do so as stated above and also since the references clearly teach to do so.

To stir the mixture at 1-50 rpm is also obvious since it is such a broad range and since such a speed is common in such mixing.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on 703-306-3220. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0294 for regular communications and 703-308-0294 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

A handwritten signature in dark ink, appearing to read 'M. Meller', with a long horizontal flourish extending to the right.

Michael V. Meller
Primary Examiner
Art Unit 1654

MVM
May 7, 2003